THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

-

W.A.No. 1882 of 2004

Date: 17.02.2006

Between:

Ch. Jyothirmayee

…… Appellant.

And

The Director of School Education, Govt. of A.P., Hyderabad & others

……. Respondents

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

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–

W.A.No. 1882 of 2004

JUDGMENT: *(per the Hon'ble Sri Justice B. Prakash Rao)*

Heard Sri N.V. Anantha Krishna, the learned counsel for the appellant, the learned Government Pleader for School Education on behalf of respondents 1 to 4, Sri N. Satyanarayana, the learned counsel for the fifth respondent and at their request the main appeal itself is taken up for disposal at the stage of admission.

This appeal is at the instance of the unsuccessful writ petitioner, who sought to assail, by way of a writ of *mandamus*, the action on the part of the fifth respondent in not continuing her in service as illegal and ultra vires to the provisions of the A.P. Education Act (for short 'the Act') and the Rules framed there under apart from violative of Articles 14 and 21 of the Constitution of India and also further directions to pay the wages from April 1994 onwards.

The main grievance of the appellant was that in fact she went on leave. However, the same was taken as if she has resigned. Though she sought for re-joining she was not allowed. Consequently, as per the proceedings dated 04.03.1994 of the Deputy Inspector of Schools, which was addressed to the District Educational Officer, *prima facie*, a finding was given with a detailed reason to the effect that there were continuing instances to show that the alleged resignation is on. However, ultimately, it was observed that the genuineness of the resignation letter alleged to have been submitted by the appellant, is to be established. Subsequently, there have been various proceedings, including the proceedings dated 23.11.1995 of the District Educational Officer, Kakinada addressed to the Correspondent, Blue Star Convent Aided Elementary School, Pithapuram holding that the resignation of the appellant is not accepted.

The case of the appellant is that if the very resignation was in serious dispute, as rightly pointed out by the Education authorities, she is entitled to be reinstated with all the attendant benefits and also continuous service. Hence, she filed the writ petition.

The learned Single Judge, by going into all the submissions made on either side, did not find favour with the appellant and dismissed the same holding that the appellant is at liberty to avail such other remedies as are open to her for redressal of her grievance. Hence the appeal has been preferred by the appellant.

After hearing the learned counsel on either side and on perusal of the material, we are also of the opinion that the genuineness of the resignation letter alleged to have been submitted by the appellant has to be established, as rightly observed by the Deputy Inspector of Schools through the proceedings dated 04.03.1994 and further re-iterated by the District Educational Officer through his proceedings dated 23.11.1995. Genuineness of the resignation letter has to be gone into only in consonance of properly filed proceedings by giving opportunity to the appellant as well as respondent No.5-management. Admittedly, the appellant has not taken recourse to any such proceedings for the purpose of establishing the genuineness of the resignation letter. In fact, on a reading of the entire proceedings, though there have been several contentions as to the genuineness in regard to the resignation letter, the same cannot be taken as finding of facts in favour of the appellant. Necessarily, proper enquiry has to be conducted in proper proceedings for arriving at such a finding.

As rightly pointed out by the learned Government Pleader, the only available remedy for the appellant is to approach the third respondent under Section 80 of the Act in the manner as contemplated therein and the Rules framed there under.

Having regard to the same, without going into merits of the case, we are leaving it open to the appellant to approach the third respondent under Section 80 of the Act and file an appeal within four weeks from today.

It is needless to mention that on receipt of such an appeal, the same shall be enquired into and disposed of in accordance with law, on merits, within three months thereafter, after giving due notice and opportunity to both the sides.

With the above said observations, the writ appeal is dismissed. There shall be no order as to costs.

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(B.PRAKASH RAO.J)

(D. APPA RAO.J)

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Dt.17.02.2006